

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte BILLIE JEAN LONGSTRETH

Appeal No. 2006-2383
Application 09/025,896

ON BRIEF



Before OWENS, CRAWFORD and FETTING, *Administrative Patent Judges*.
OWENS, *Administrative Patent Judge*.

DECISION ON APPEAL

This appeal is from a rejection of claim 7, which is the only pending claim.

THE INVENTION

The appellant claims a cylindrical, non-powered, hand operated cabbage cutter, one end of which has a closed top covered by a handgrip, and the other end of which is open and is filed or rubbed down to a smooth, thin, sharp cutting and chopping edge. Claim 7 is as follows:

Claim 7. I claim a cabbage cutter that is non-powered and hand-operated for cutting and chopping cabbage comprising a hollow, metal, cylindrical body having two ends and when placed

in a perpendicular position has a top and a bottom that are connected by a cylindrical wall; the top is closed and has a permanently affixed handgrip that covers the closed top and extends slightly over onto the wall of the cabbage cutter, and provides additional strength to the device; the bottom is open and filed or rubbed down to a smooth, thin, sharp cutting and chopping edge that can be sharpened if the cutting and chopping edge should become dulled from extensive use; the device has a removable protective cover, contiguous with the cutting and chopping edge, that when placed over the cutting and chopping edge serves as a shield from injury, and protects the cutting and chopping edge from becoming damaged when the device is not in use or stored; the device works best when cabbage head is cut in chunks, placed in a large container, and an operator grasps the handgrip and brings the cutting and chopping edge down repeatedly (in an up and down motion) onto the cabbage, cutting the cabbage to desired size.

THE REFERENCES

Bell	893,425	Jul. 14, 1908
Rothje	1,525,514	Feb. 10, 1925
Collins	3,004,340	Oct. 17, 1961
Snyder	3,456,346	Jul. 22, 1969
Seib et al. (Seib)	4,858,317	Aug. 22, 1989

THE REJECTIONS

Claim 7 stands rejected as follows: under 35 U.S.C. § 102(b) as anticipated by Seib, and under 35 U.S.C. § 103 as obvious over 1) Rothje in view of Snyder, 2) Rothje in view of Seib, 3) Bell in view of Collins and Snyder, and 4) Bell in view of Collins and Seib.

OPINION

We reverse the aforementioned rejections.

Rejection under 35 U.S.C. § 102(b) over Seib

The appellant's claim requires that the cylindrical body has a closed top covered by a permanently affixed handgrip that extends

slightly over onto the wall of the cylindrical body. The examiner relies upon the portion of Seib's top section 18 between upper edges 38 of annular cutter 36 (figure 2) as corresponding to the appellant's closed top (answer, page 7). That portion is not the top of the annular cutter but, rather, is part of top section 18 into which the annular cutter is press fitted (col. 2, lines 67-68). The portion of Seib's top section 18 between the upper edges 38 of annular cutter 36, which the examiner relies upon as corresponding to the appellant's closed top, and the central cutter support 32 and its surface 34, which the examiner relies upon as corresponding to the appellant's handgrip (answer, page 8), are not affixed but, rather, are portions of the same molded top section 18 (col. 2, lines 60-66; col. 3, lines 54-56; figure 2). It is not reasonable to consider the portion of top section 18 above the upper edges and around the sides of annular cutter 36 to be part of the handgrip, yet consider the portion of that same top section between the upper edges of annular cutter 36 to be part of the annular cutter.

We therefore reverse the rejection under 35 U.S.C. § 102(b) over Seib.

*Rejection under 35 U.S.C. § 103
over Rothje in view of Snyder*

The examiner argues that Rothje discloses handgrip 6 (answer, page 4). The appellant's claim requires a handgrip that covers a

closed top and extends slightly over onto a cylindrical wall. Rothje's handgrip (6), which is affixed to a rotatable disk (5) inside a grooved ring (2') at the upper end of Rothje's ice cream dispenser, does not extend over onto the wall (figure 1).

The examiner relies upon Snyder for a disclosure of a cylindrical shaped cutter having a protective cover (40) for protecting a user from a cutting edge (30) (answer, page 4). The cutting edge referred to by the examiner is the blade (30) of a cutter for cutting circles in materials such as carpeting (col. 2, lines 22-25; col. 3, lines 1-3). A cylindrical protective cover (40) is placed over the blade (col. 4, lines 1-6; figure 3). The examiner argues that "it would have been obvious to the ordinary artisan at the time of the instant invention to provide the device of Rothje with the cover as taught by Snyder in order to prevent potential harm to the user from the cutting edge" (answer, page 4). In order for a prima facie case of obviousness to be established, the teachings from the prior art itself must appear to have suggested the claimed subject matter to one of ordinary skill in the art. See *In re Rinehart*, 531 F.2d 1048, 1051, 189 USPQ 143, 147 (CCPA 1976). The mere fact that the prior art could be modified as proposed by the examiner is not sufficient to establish a prima facie case of obviousness. See *In re Fritch*, 972 F.2d 1260, 1266, 23 USPQ2d 1780, 1783 (Fed. Cir. 1992). The examiner has not

established that the applied references themselves would have fairly suggested, to one of ordinary skill in the art, using a protective cover for the blade of a circle cutter for materials such as carpeting to protect a user against being cut by the beveled edge (2) (Rothje, page 1, line 53) of an ice cream dispenser.

For the above reasons we reverse the rejection under 35 U.S.C. § 103 over Rothje in view of Snyder.

*Rejection under 35 U.S.C. § 103
over Rothje in view of Seib*

The examiner argues that "it would have been obvious to the ordinary artisan at the time of the instant invention to provide the device of Rothje with the cover as taught by Seib et al in order to prevent potential harm to the user from the cutting edge and to facilitate storage of the device" (answer, pages 4-5). The cover referred to by the examiner is the bottom section (20) of Seib's stoma flange cutter (answer, page 3). That section is configured to be pressed together with the top section and rotated along with the top section, if necessary, to cut stoma flange (col. 3, lines 34-45). The examiner has not established that the applied references would have fairly suggested, to one of ordinary skill in the art, combining the bottom section of a stoma flange cutter with an ice cream dispenser to protect a user against being cut by the ice cream dispenser's beveled edge (2) (Rothje, page 1, line 53).

Accordingly, we reverse the rejection under 35 U.S.C. § 103 over Rothje in view of Seib.

*Rejections under 35 U.S.C. § 103
over Bell in view of Collins and Snyder,
and over Bell in view of Collins and Seib*

Bell (lines 9-16; figure 1) and Collins (col. 1, lines 30-40; col. 2, lines 38-65; figure 1) both disclose cylindrical vegetable cutters. Collins' cutter has, as its cutting device, a sharp, cylindrical beveled cutting edge at one end of the cutter (col. 1, lines 35-36). The examiner argues that it would have been obvious to one of ordinary skill in the art with Snyder's protective cover (40) or the bottom portion (20) of Seib's stoma flange cutter to prevent potential harm to the user and to facilitate storage of the device (answer, pages 5-6). The examiner has not established that the applied references themselves would have fairly suggested, to one of ordinary skill in the art, using, on a vegetable cutter having a cylindrical cutting edge, Snyder's cover for protection against cutting by a blade of a cutter for cutting circles in materials such as carpeting (col. 4, lines 1-6), or the lower portion of Seib's stoma flange cutter that is pressed together with the top section and rotated along with the top section, if necessary, to cut stoma flange (col. 3, lines 34-45). Thus, the record indicates that the examiner used impermissible hindsight in combining the references. See *W.L. Gore & Associates v. Garlock*,

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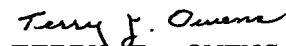
Inc., 721 F.2d 1540, 1553, 220 USPQ 303, 312-13 (Fed. Cir. 1983),
cert. denied, 469 U.S. 851 (1984); *In re Rothermel*, 276 F.2d 393,
396, 125 USPQ 328, 331 (CCPA 1960).

We therefore reverse the rejections under 35 U.S.C. § 103 over
Bell in view of Collins and either Snyder or Seib.

DECISION

The rejections of claim 7 under 35 U.S.C. § 102(b) over Seib,
and under 35 U.S.C. § 103 over 1) Rothje in view of Snyder,
2) Rothje in view of Seib, 3) Bell in view of Collins and Snyder,
and 4) Bell in view of Collins and Seib, are reversed.

REVERSED


TERRY J. OWENS
Administrative Patent Judge)


MURRIEL E. CRAWFORD
Administrative Patent Judge)


ANTON W. FETTING
Administrative Patent Judge)

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) APPEALS
) AND
) INTERFERENCES

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